

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | | |
|---------------------------|---|---------------------------------|
| UNITED STATES OF AMERICA, |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | CAUSE NO. 1:07-cr-00017-WTL-DML |
| |) | |
| JAMES LEE AUSTIN, |) | - 01 |
| Defendant. |) | |

REPORT AND RECOMMENDATION

On January 4, 2019, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on July 3, 2018. [Dkt. 40.] Defendant appeared in person and by FCD counsel Dominic Martin. Government represented by AUSA Cynthia Ridgeway. USPO represented by Ryan Sharp.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Austin of his rights and ensured he had a copy of the Petition. Defendant Austin waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Austin admitted violation no. 1 as set forth in the Petition.
3. The allegations to which Defendant admitted, as fully set forth in the Petition, are as follows:

**Violation
Number**

Nature of Noncompliance

1

"The defendant shall not commit another federal, state, or local crime."

On June 29, 2018[,] Mr. Austin was charged with Battery Resulting in Bodily Injury, a misdemeanor, under cause number 49G12-1806-CM-021138. On July 2, 2018, an initial hearing was held and Mr. Austin was ordered to remain in custody until a bond review hearing on July 5, 2018.

On June 29, 2018, Mr. Austin was in the Marion County Sheriff's Office Intake Facility after being detained on a Marion County Community Correction violation. Mr. Austin was observed attacking another inmate. When officers entered the cell, the victim had blood dripping from his face onto the cell floor. Mr. Austin became verbally aggressive with the officers when ordered to turn around and put his hands behind his back. He would not comply with orders until an officer removed her Taser.

4. The government moved to dismiss violation no. 2 as set forth in the Petition, which motion was granted without objection.

5. The Court finds that:

- (a) The highest grade of violation is a Grade C violation.
- (b) Defendant's criminal history category is VI.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 8 to 14 months' imprisonment.

5. The parties jointly recommended a sentence of eight (8) months imprisonment, with no supervised release to follow.

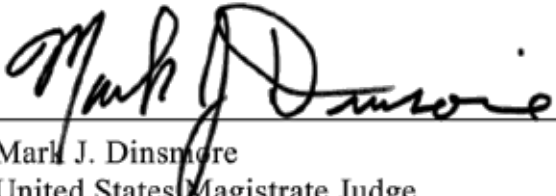
The Magistrate Judge, having considered the factors set forth in 18 U.S.C. § 3553(a), and as more fully set forth on the record, recommends that the Court find that Defendant violated the conditions set forth in violation no. 1 of the Petition, and recommends that Defendant's supervised release be revoked, and that he be sentenced to the custody of the Attorney General or his designee for a period of eight (8) months, with no supervised release to follow.

Defendant requested a recommendation of placement at FCI Ashland, Kentucky; accordingly, the Magistrate Judge further recommends that the Court's order include a recommendation that Defendant's period of incarceration be served at FCI Ashland, Kentucky, if appropriate.

Defendant Austin is to remain in custody pending the District Judge's action on this Report and Recommendation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to the Report and Recommendation.

Dated: 10 JAN 2019



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

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USMS

USPO